

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. APHIS-2006-0151]

**Oriental Fruit Fly; Add a Portion of San Bernardino County, CA, to the List of Quarantined Areas****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Oriental fruit fly regulations by adding a portion of San Bernardino County, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from that area. We are also amending the definitions of the terms *core area* and *day degrees* and adding jujube (*Ziziphus* spp.) to the list of articles regulated for Oriental fruit fly. These actions are necessary to prevent the artificial spread of Oriental fruit fly to noninfested areas of the United States and to update the regulations to reflect current science and practices.

**DATES:** This interim rule is effective November 17, 2006. We will consider all comments that we receive on or before January 16, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0151 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0151, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0151.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the

USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne D. Burnett, National Coordinator, Fruit Fly Exclusion and Detection Programs, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737-1234; (301) 734-6553.

**SUPPLEMENTARY INFORMATION:****Background**

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93-10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93-3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93-3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies

reveal that a portion of San Bernardino County, CA, is infested with the Oriental fruit fly.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in San Bernardino County. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into noninfested areas of the United States, we are amending the regulations in § 301.93-3 by designating a portion of San Bernardino County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the regulatory text at the end of this document.

Section 301.93-1 of the regulations currently defines the term *core area* as the "1 square mile area surrounding each property where Oriental fruit fly has been detected." We have determined that it is necessary to amend the definition of *core area* because the use of GPS technology allows us to more accurately measure the distance from a positive detection site of Oriental fruit fly. Therefore, we are revising the definition of the term *core area* to read "the area within a circle surrounding each detection using a 1/2-mile radius with the detection as a center point."

The regulations currently define the term *day degrees* as a mathematical construct combining average temperature over time that is used to calculate the length of an Oriental fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F.: [(Minimum Daily Temp + Maximum Daily Temp)/2] - 54° = Day Degrees. We have determined that it is necessary to amend the definition of *day degrees* because the use of weather service data entered into a computer model enables us to more accurately measure day degree accumulation based upon the latest biological information than was previously possible. Therefore, we are revising the definition of *day degrees* to read "a unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species."

We are also adding jujube (*Ziziphus* spp.) to the regulated articles list in § 301.93-2 because jujube was recorded as a host of the Oriental fruit fly as documented in a peer reviewed international journal.

**Emergency Action**

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Oriental fruit fly regulations by adding a portion of San Bernardino County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

County records indicate there are approximately 18 nurseries, 96 yard maintenance companies, 2 growers (including 1 jujube grower), 1 mobile vendors, 5 food banks, and 34 fruit sellers within the quarantined area that may be affected by this rule.

We expect that any small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears to be minimal. The effect on any small entities that may move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this interim rule.) In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine,

Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 7 CFR part 301 is amended as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.93–1 is amended by revising the definitions of *core area* and *day degrees* to read as follows:

**§ 301.93–1 Definitions.**

\* \* \* \* \*

*Core area.* The area within a circle surrounding each detection using a 1/2-mile radius with the detection as a center point.

*Day degrees.* A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species.

\* \* \* \* \*

**§ 301.93–2 [Amended]**

■ 3. In § 301.93–2, paragraph (a) is amended by adding, in alphabetical order, an entry for “Jujube (*Ziziphus* spp.)”.

■ 4. In § 301.93–3, paragraph (c) is revised to read as follows:

**§ 301.93–3 Quarantined areas.**

\* \* \* \* \*

(c) The areas described below are designated as quarantined areas:

California

*San Bernardino County.* That portion of San Bernardino County in the Rialto area bounded by a line as follows: Beginning at the intersection of State Highway 201 and East Avenue; then north on East Avenue to Banyan Street; then east, northeast, north, and northeast on Banyan Street to Wardman Bullock Road; then north and northwest on Wardman Bullock Road to Colobero Road; then north along an imaginary line from the intersection of Wardman Bullock Road and Colobero Road to its intersection with the southern boundary line of the San Bernardino National Forest; then east, northeast, northwest, southeast, east, southeast, northeast, north, northeast, and east along the

southern boundary line of the San Bernardino National Forest to its intersection with U.S. Interstate 15; then northeast on U.S. Interstate 15 to its next intersection with the San Bernardino National Forest boundary line; then northwest, north, northeast, southeast, east, northeast, southeast, and east along the San Bernardino National Forest boundary line to its intersection with Palm Avenue; then southwest on Palm Avenue to U.S. Interstate 215; then southeast on U.S. Interstate 215 to University Parkway; then southwest on University Parkway to N. State Street; then south on N. State Street to State Highway 210; then west on State Highway 210 to the Southern Pacific railroad track; then south, southwest, south, and southeast along the Southern Pacific railroad track to its intersection with W. Base Line Street; then west on W. Base Line Street to N. Pepper Avenue; then south on N. Pepper Avenue to State Highway 66; then west on State Highway 66 to N. Cactus Avenue; then south on N. Cactus Avenue to W. Rialto Avenue; then west on W. Rialto Avenue to W. Arrow Boulevard; then west on W. Arrow Boulevard to Arrow Boulevard; then west on Arrow Boulevard to Cherry Avenue; then north on Cherry Avenue to State Highway 66; then west on State Highway 66 to East Avenue; then north on East Avenue to the point of beginning.

Done in Washington, DC, this 14th day of November 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E6-19451 Filed 11-16-06; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV06-930-2 FR]

#### **Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Cherry Industry Administrative Board (Board) for the 2006-2007 fiscal year and subsequent fiscal years from \$0.0021 to \$0.0066 per pound to fund the Board's administrative expenses and its new research and promotion

program. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The Board locally administers the marketing order which regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The fiscal year began July 1, 2006, and ends June 30, 2007. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* This final rule becomes effective November 20, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Dawana J. Clark or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734-5243, Fax: (301) 734-5275, or e-mail: [Dawana.Clark@usda.gov](mailto:Dawana.Clark@usda.gov) or [Kenneth.Johnson@usda.gov](mailto:Kenneth.Johnson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherries are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate established for the Board for the 2006-2007 and subsequent fiscal years for tart cherries from \$0.0021 to \$0.0066 per pound of tart cherries to fund the Board's administrative expenses and its new research and promotion program.

The tart cherry marketing order provides authority for the Board, with approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 930.41 of the order. In addition, § 930.48 of the order provides that the Board, with the approval of USDA, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cherries. The expense of such projects is paid from funds collected pursuant to § 930.41 (Assessments), or from such other funds as approved by the USDA.

For the 2003-2004 fiscal year, the Board recommended, and USDA approved, an assessment rate of \$0.0021 per pound of tart cherries handled that would continue in effect from fiscal